

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

049051-0221

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on _____

Signature _____

Typed or printed name _____

Application Number

10/787,227

Filed

February 27, 2004

First Named Inventor

Bach H. Le

Art Unit

2443

Examiner

Kishin G. Belani

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

/Soyeon (Karen) Pak Laub/

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

Signature

Soyeon (Karen) Pak Laub

Typed or printed name

☒ attorney or agent of record.
Registration number 39,266

949-851-0633

Telephone number

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

February 27, 2012

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below.

☒ *Total of 1 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Customer Number: 31824
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Bach H. LE, et al.	:	Confirmation Number: 4842
	:	
Application No.: 10/787,227	:	Group Art Unit: 2443
	:	
Filed: February 27, 2004	:	Examiner: Kishin G. Belani
	:	
For: SESSION MANAGER FOR	:	
SECURED REMOTE COMPUTING :	:	

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Commissioner for Patents
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Claims 66, 68, and 70-87 are in the application, of which Claims 66, 84, and 85 are the independent claims. All of the claims have been rejected under 35 U.S.C. § 103(a) over the cited prior art. *See* Response dated January 27, 2012, pp.8-12. The rejections are respectfully traversed, and reconsideration and withdrawal of these rejections are respectfully requested.

Each of the independent claims, namely Claims 66, 84, and 85, recites a “computing device [that] is configured to facilitate communication of [a] communications session using a first communication channel, and [that] is configured to facilitate communication of [a] lock session signal, [an] unlock session signal, and [] identification information using a second communication channel, and wherein communications occurring through the first communication channel are suspended when the communications session is locked.” It is respectfully submitted that the applied references, whether alone or in combination, in view of what was known to one of ordinary skill in the art at the time the invention was made, do not teach or suggest at least these limitations of the independent claims.

With reference to the above-identified limitation of the independent claims, the Office Action dated November 30, 2011 (“Office Action”) contends that U.S. Patent No. 6,244,957 (“Walker”) teaches a lock session signal and an unlock session signal, that U.S. Pat. Appln. Pub.

No. 2005/0080915 (“Shoemaker”) discloses the first and second communication communications channels, and that the combination of these two applied references would be obvious to a person of ordinary skill in the art. *See* Office Action, p.7, 27; *see also* Advisory Action dated February 16, 2012 (“Advisory Action”), p.2.

Applicants respectfully disagree with this contention. None of the applied references teaches using a lock session signal on one communication channel to lock another communication channel.

Specifically, assuming, *arguendo*, that Walker discloses suspending communications occurring through a communication channel, which Applicants do not concede, and assuming, *arguendo*, that Shoemaker discloses a first communications channel and a second communications channel, which Applicants also do not concede, then the combination of Shoemaker with Walker, with or without U.S. Patent No. 6,145,083 (“Shaffer”) (that was cited as allegedly teaching a detection of a user departure), would still not teach or suggest a “computing device [that] is configured to facilitate communication of [a] communications session using a first communication channel, and [that] is configured to facilitate communication of [a] lock session signal, [an] unlock session signal, and [] identification information using a second communication channel, and wherein communications occurring through the first communication channel are suspended when the communications session is locked,” because none of the applied references teaches or suggests using a second communication channel to communicate a lock session signal to lock a first communication channel. In other words, none of the applied references teaches using a lock session signal on one communication channel to lock a different communication channel.

Applicants respectfully reassert that the Examiner’s conclusory statements reproduced above are based on impermissible hindsight reasoning in view of Applicants’ disclosure. The Examiner’s combination of Shoemaker with Walker to teach a “computing device [that] is configured to facilitate communication of [a] communications session using a first communication channel, and [that] is configured to facilitate communication of [a] lock session signal, [an] unlock session signal, and [] identification information using a second communication channel, and wherein communications occurring through the first communication channel are suspended when the communications session is locked,” is a result of inappropriate hindsight reasoning.

“The references themselves, not the invention itself, must provide some teaching whereby the applicant’s combination would have been obvious.” *In re Gorman*, 933 F.2d 982 (Fed. Cir. 1991) (emphasis added); *Heidelberger Druckmaschinen AG v Hantscho Commercial Products, Inc.*, 21 F.3d 1068 (Fed. Cir. 1993). “Obviousness can not be established by hindsight combination to produce the claimed invention... [I]t is the prior art itself, and not the applicant’s achievement, that must establish the obviousness of the combination.” *In re Dance*, 160 F.3d 1339 (Fed. Cir. 1998). The only teaching or suggestion of “facilitat[ing] communication of [a] communications session using a first communication channel, and ... facilitat[ing] communication of [a] lock session signal, [an] unlock session signal, and [] identification information using a second communication channel, ... wherein communications occurring through the first communication channel are suspended when the communications session is locked,” comes from the subject application. The Office Action merely cited Walker and Shoemaker for their individual teachings, but failed to disclose where, if anywhere, the applied references teach using a lock session signal on one communication channel to lock another communication channel. Furthermore, the Office Action used improper hindsight bias to combine the applied references without providing any basis for combination, and consequently, the Office Action does not establish prima facie obviousness.

The Advisory Action, however, indicates that the motivation to combine the references is that “Shoemaker et al., by providing two separate communication channels, allow a user to better control the communication over the game channel of Walker et al., as shown in Fig. 1C and recited in paragraphs 0008 and 0019 of Shoemaker et al.” The Advisory Action states that in view of this alleged teaching of Shoemaker, and Walker’s alleged teaching for the need for suspending a communications channel, that therefore “[t]he examiner did not require hindsight teachings of the instant application to select Walker et al. and Shoemaker et al. references.” Applicants respectfully disagree.

Shoemaker in paragraph [0008] discloses that “[t]o transmit the computing experience 202 in high quality, [a] user interface is communicated through a user-interface channel 210 and the media component(s) 206 are communicated through a media channel 208 via network 211.” Shoemaker in paragraph [0019] discloses that “exemplary, non-limiting links between the media types and devices illustrate that each of the types of devices may or may not have the ability to render the type of media in question. Thus, the media rendering capabilities of the remote

devices are diverse.” Even assuming, *arguendo*, that the cited references teach or suggest “by providing two separate communication channels, allow a user to better control the communication over [a] channel” as contended in the Advisory Action, which Applicants do not concede, then it still would not have been obvious to one of ordinary skill in the art to combine the references to teach using a lock session signal on one communication channel to lock a different communication channel. An alleged teaching of “by providing two separate communication channels, allow[ing] a user to better control the communication over [a] channel,” still does not indicate or otherwise suggest communication between the two separate channels, but instead keeps each of the two channels’ communications completely separated.

Furthermore, Applicants respectfully submit that one of ordinary skill in the art at the time the invention was made would not have been motivated to combine the references to teach using a lock session signal on one communication channel to lock a different communication channel because for various additional reasons. For example, the Examiner contends that Walker discloses suspending communications occurring through a communication channel using that same communication channel. Assuming, *arguendo*, that such contention can be made, which Applicants do not concede, Applicants respectfully submit that if one of ordinary skill in the art at the time the invention was made wanted to suspend a communication channel, then one of ordinary skill in the art would not have been motivated to create a more intricate and complex configuration of using a lock session signal on one communication channel to lock a different communication channel. This is especially the case when Walker allegedly teaches a simpler way to lock a communications channel, namely, by allegedly disclosing suspending communications occurring through a communication channel using that same communication channel. Thus, Walker teaches away from the combination of references as the combination of references leads to a more complex configuration.

Thus, for at least the above reasons, independent Claims 66, 84, and 85 are believed to be in condition for allowance. The other claims currently under consideration in the application are dependent from their respective independent claims discussed above and therefore are believed to be allowable over the applied references for at least similar reasons. Because each dependent claim is deemed to define an additional aspect of the invention, the individual consideration of each on its own merits is respectfully requested. Therefore, the rejections of the claims under 35 U.S.C. §103 should be reconsidered and withdrawn and such actions are courteously solicited.

Application No.: 10/787,227

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 502624 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

/Soyeon (Karen) Pak Laub/

Soyeon (Karen) Pak Laub, Reg. # 39,266

4 Park Plaza, Suite 1700
Irvine, CA 92614-2559
Phone: 949.851.0633 AAS:kcc
Facsimile: 949.851.9348
Date: February 27, 2012

**Please recognize our Customer No. 31824
as our correspondence address.**